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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 Michael Kirk Thomas Brooks,

5 Plaintiff

6 v.

7 Stephen Fender, et al.,

8 Defendants

Case No.: 2:24-cv-01185-CDS-EJY

Order Adopting Magistrate Judge's Report  
and Recommendation and Closing Case

[ECF No. 5]

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10 Magistrate Judge Elayna Youchah recommends that I dismiss plaintiff Michael Brooks'  
11 complaint because defendants<sup>1</sup> are either immune from suit or not subject to suit under  
12 42 U.S.C. § 1983 or *Bivens*.<sup>2</sup> R&R, ECF No. 5. She further recommends that Brooks' application to  
13 proceed *in forma pauperis* be denied without prejudice so that Brooks may pursue his claims in  
14 state court. *Id.* at 5. As set forth in the R&R, and in accordance with the local rules, Brooks had  
15 until September 9, 2024, to file to file an objection to the R&R. *Id.* at 6 (citing LR IB 3-2 (stating  
16 that parties wishing to object to an R&R must file objections within fourteen days)); *see also* 28  
17 U.S.C. § 636(b)(1)(C) (same). As of the date of this order, Brooks has neither objected to the  
18 R&R nor requested more time to do so.

19 "[N]o review is required of a magistrate judge's report and recommendation unless  
20 objections are filed." *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas*  
21 *v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). I  
22 nonetheless reviewed Judge Youchah's findings and agree with her conclusion that, based on the

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24 <sup>1</sup> District Attorney Steve Wolfson; Assistant District Attorneys John T. Jones, Jr., Aaron M. Nance, Joshua  
25 Judd, and Cristian Gonzalez; Clark County Public Defender Jennifer A. Smith; Eighth Judicial District  
26 Court Judge Kathleen E. Delaney; Mayor Carolyn Goodman; Gregory (sic) Sisolak; United States  
Attorney Jason M. Frierson; Assistant United States Attorney Stephen Fender; and Federal Public  
Defenders Heidi Ojeda and Ayden Kebede.

<sup>2</sup> *Bivens* actions are identical to civil rights actions under 42 U.S.C. § 1983 except for the replacement of  
state actor under § 1983 by federal actor under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

1 allegations contained in the complaint, all named defendants are immune from suit. Pro se  
2 litigants should be given leave to amend unless it is absolutely clear that the defective complaint  
3 cannot be cured by amendment. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). Here,  
4 amendment would be futile because the defendants are covered by immunity. As a result, and  
5 because no objection is filed, I adopt the R&R in its entirety and dismiss the complaint without  
6 prejudice.

7  
8 **Conclusion**

9 IT IS THEREFORE ORDERED that the magistrate judge's report and recommendation  
10 [ECF No. 5] is adopted. The complaint is now dismissed without prejudice.

11 IT IS FURTHER ORDERED that plaintiff's application to proceed *in forma pauperis* [ECF  
12 No. 4] is denied without prejudice.

13 The Clerk of Court is kindly instructed to close this case.

14 Dated: October 8, 2024

15   
16 Cristina D. Silva  
17 United States District Judge  
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